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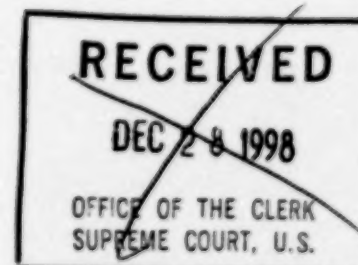
98-7450

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

VINCENT F. RIVERA,
PETITIONER

vs.

STATE OF FLORIDA, ET AL.,
RESPONDENT(S)



MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

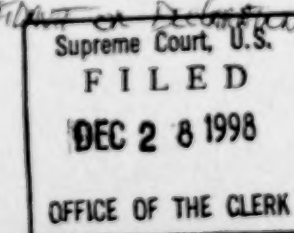
THE PETITIONER ASKS LEAVE TO FILE THE ATTACHED PETITION FOR A WRIT OF
CERTIORARI WITHOUT PREPAYMENT OF COSTS AND TO PROCEED IN FORMA
PAUPERIS.

[X] PETITIONER HAS PREVIOUSLY BEEN GRANTED LEAVE TO PROCEED IN FORMA
PAUPERIS IN THE FOLLOWING COURT(S):

UNITED STATES SUPREME COURT; UNITED STATES COURT OF APPEALS;
UNITED STATES DISTRICT COURT;

STATE COURT: FLORIDA SUPREME COURT; DISTRICT COURT OF
APPEAL; CIRCUIT COURT.

PETITIONER'S AFFIDAVIT OF DEPOUNDMENT IN SUPPORT OF THIS MOTION IS ATTACHED HERETO.



Vincent F. Rivera
VINCENT F. RIVERA

AFFIDAVIT OR DECLARATION

IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, VINCENT F. RIVERA, AM THE PETITIONER IN THE ABOVE-ENTITLED CASE.
IN SUPPORT OF MY MOTION TO PROCEED WITHOUT BEING REQUIRED TO PREPAY
FEES, COSTS OR GIVE SECURITY THEREFOR, I STATE THAT BECAUSE OF MY POVERTY
I AM UNABLE TO PAY THE COSTS OF THIS CASE OR TO GIVE SECURITY THEREFOR;
AND I BELIEVE I AM ENTITLED TO REDRESS. I FURTHER SWEAR THAT THE RE-
SPONSES I HAVE MADE TO THE QUESTIONS AND INSTRUCTIONS BELOW RELATING
TO MY ABILITY TO PAY THE COST OF PROCEEDING IN THIS COURT ARE TRUE.

1. ARE YOU PRESENTLY EMPLOYED? YES — NO ☒ 3. IF THE ANSWER TO NO,
STATE THE DATE OF YOUR LAST EMPLOYMENT AND THE AMOUNT OF SALARY OR WAGES
PER MONTH WHICH YOU RECEIVED. (21 SEPT 95) (\$22.56)

2. HAVE YOU RECEIVED WITHIN THE PAST TWELVE MONTHS ANY INCOME AND
STATE THE AMOUNT RECEIVED FROM EACH DURING THE PAST TWELVE MONTHS?
15/100 FIFTEEN DOLLARS FROM GIRLFRIEND/FRIEND

3. DO YOU OWN ANY CASH OR HAVE A CHECKING OR SAVINGS ACCOUNT?
YES — NO ☒

4. DO YOU OWN ANY REAL ESTATE, STOCKS, BONDS, NOTES, AUTOMOBILES, OR
OTHER VALUABLE PROPERTY (EXCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND
CLOTHING) YES — NO ☒

5. LIST THE PERSONS WHO ARE DEPENDENT UPON YOU FOR SUPPORT AND STATE
YOUR RELATIONSHIP TO THOSE PERSONS. NO ONE

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

(SWORN TO BEFORE ME THIS
15TH DAY OF DECEMBER 1998)

G. F. Holtom
NOTARY PUBLIC

G. F. HOLTOM
Notary Public, State of Florida
My Comm. expires Feb. 26, 2001
Comm. No. 66 618204

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

VINCENT F. RIVERA, PETITIONER,

VS.

STATE OF FLORIDA, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

VINCENT F. RIVERA #5785248

FLORIDA STATE PRISON

P.O.B. 181

RAIFORD FLORIDA 32091

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER PETITIONER WAS ENTITLED TO A RULING ON HIS OCTOBER 23, 1998 MOTION FOR THE APPOINTMENT OF COUNSEL PRIOR TO rendition OF FINAL JUDGMENT BELOW [?]
2. WHETHER THE APPOINTMENT OF A U.S. MAGISTRATE JUDGE TO A PROCEEDING WITHOUT PRIOR CONSENT OF THE PARTIES IS IN EXPRESS AND DIRECT CONFLICT WITH THE SPECIFIC REQUIREMENTS OF THE LAW UNDER RULE 73, FEDERAL RULES OF CIVIL PROCEDURE; 28 USC § 636(b) AND § 636(c) AND/OR OTHER PROVISIONS OF THE FEDERAL MAGISTRATE ACT OF 1979, AS APPLIED HEREIN UNDER [?]
3. WHETHER THE LOWER TRIBUNAL(S) APPLIED 28 USC § 1915 AS AN ILLEGAL SANCTION CONSIDERING THE FORM AND/OR SUBSTANCE OF THE INITIAL COMPLAINT, VIOLATIVE OF THE FIRST, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS AND/OR ALTERNATIVELY:
 - (A) DOES THE MAGISTRATE'S REPORT AND RECOMMENDATION DENOTE ABUSE OF DISCRETION AGAINST THE COMMON INTEREST OF FEDERAL CONSTITUTION;
 - (B.) DO THE MAGISTRATE AND DISTRICT JUDGES DISPLAY BIAS AND PREJUDICE AGAINST THE PETITIONER OR IN FAVOR OF THE ADVERSE PARTY;
 - (C.) DID THE DISTRICT COURT PREMATURELY AS WELL AS ERRONEOUSLY ADOPT THE REPORT AND RECOMMENDATION SINCE NO FACTUAL ASSESSMENT HAD BEEN MADE, WITH RESPECT TO THE FINAL DISPOSITION OF THE "PRIOR DISMISSALS" CITED THEREIN PRIOR TO rendition OF A JUDGMENT [?]
4. WHETHER THE JUDGMENTS OF BOTH THE DISTRICT COURT AND COURT OF APPEALS, JOINTLY AND SEVERALLY VIOLATE PETITIONER'S DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS OF ACCESS TO THE COURTS IN LIEU OF BOUNDS V. SMITH [?]

LIST OF PARTIES

[] All PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

[✓] All PARTIES DO NOT APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

FLORIDA DEPARTMENT OF CORRECTIONS DEFENDANT - APPELLEE

FLORIDA DEPARTMENT OF LAW ENFORCEMENT DEFENDANT - APPELLEE

COUNTY OF BRADFORD DEFENDANT - APPELLEE

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

No:

VINCENT F. RIVERA,
PETITIONER

vs.

STATE OF FLORIDA, ET AL.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

VINCENT F. RIVERA RESPECTFULLY PETITIONS THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT RENDERED -- AND ENTERED IN CASE NUMBER 98-2632 ON DECEMBER 3, 1998 (UNREPORTED), WHICH DISMISSED THE APPEAL AS FRIVOLOUS MINUS A RULING ON A PREVIOUS MOTION FOR APPOINTMENT OF COUNSEL.

OPINION BELOW

A COPY OF THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, WHICH DISMISSED THE APPEAL FOR WANT OF PROSECUTION, IS CONTAINED IN THE APPENDIX (A-1).

(STATEMENT OF JURISDICTION)

THE DECISION OF THE COURT OF APPEALS WAS ENTERED ON DECEMBER 3, 1998. THIS PETITION IS TIMELY FILED PURSUANT TO SUP. CT. R. 13.1. JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC § 1254(1) AND SUP. CT. R. 10.1. THE DISTRICT COURT HAD JURISDICTION BECAUSE THE PETITIONER'S SUIT AROSE UNDER 42 USC § 1983. THE COURT OF APPEALS HAD JURISDICTION UNDER 28 USC § 1291. (COURTS OF APPEALS HAVE JURISDICTION OF APPEALS OF FINAL DECISIONS OF UNITED STATES DISTRICT COURTS).

(STATUTORY AND OTHER PROVISIONS INVOLVED)

28 USC § 636
28 USC § 1915(2)
28 USC § 1915(b)
28 USC § 1915(e)(2)
42 USC § 1983
FED. R. APP. P. 24(B)
FED. R. CIV. P. 73
U.S. CONST. AMENDS. 1, 5, 6, & 14

OTHER
WRONGFUL DEATH ACT, § 768.20 FLA. STAT. (SUPP. 1995)
RULE 5.03, FLORIDA RULES OF PROBATE AND GUARDIANSHIP

REASONS FOR GRANTING THE WRIT

THE PETITIONER SUBMITS THAT THE JUDGMENT BELOW CONSTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW, AND EARMARKS CANDOR WHICH FOR THE MOST PART, IS UNQUESTIONABLY FULSOME TO THE PRINCIPLES OF RIGHT AND JUSTICE. MOREOVER, ADHERENCE TO THE SAID JUDGMENT (APPENDIX A-1) WOULD CAUSE IRREPARABLE INJURY BECAUSE PETITIONER WOULD ESSENTIALLY BE DEVESTED OF SUBSTANTIAL SUBSTANTIVE RIGHTS BY FEDERAL AUTHORITY. THEREFORE, THIS HONORABLE COURT MUST GRANT CERTIORARI. SEE E.G., CELSIUS V. BRITT, 819 F.2d 1573, 1580 (11TH CIR. 1987).

THE DECISION OF THE COURT OF APPEALS VIS-A-VIS THE MERITS OF THE INITIAL COMPLAINT IS AN ABRIDGEMENT OF THE PETITIONER'S RIGHTS UNDER THE FIRST, FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THE THIS COURT MUST GRANT CERTIORARI, QUASHING THE COURT OF APPEALS' ORIGINAL OPINION AND DECISION BECAUSE THE VIOLATION OF THE AFOREMENTIONED CONSTITUTIONAL RIGHTS WAS A FUNDAMENTAL ERROR, TANTAMOUNT TO A DEPRIVATION OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS IN THE FEDERAL FORUM; AS WELL AS A DEVIATION FROM THE REQUIREMENTS OF CONSTITUTIONAL LAW. (SEE ALSO OSBORN V. UNITED STATES BANK, 22 US (9 WHEAT.) 738, 824, 6 L.ED. 204 (1824) ("CORPORATIONS MAY ONLY APPEAR BY ATTORNEY"); NATIONAL IND THEATRE V. BUENA VISTA DISTRIBUTION, 748 F.2d 602, 609 (11TH CIR. 1984) CERT. DENIED, 471 US 1056, 105 S. CT. 2120, 85 L.ED. 2d 484 (1985) (SECTION 1654 PRECLUDES A NONLAWYER SOLE SHAREHOLDER FROM APPEARING ON BEHALF OF A CORPORATION). (SEE ESP. FARETTA V. CALIFORNIA, 422 US 806, 819-20, 95 S. CT. 2525, 2533, 45 L. ED. 2d 562 (1975) (NETING THE "BASIC RIGHT OF FREE PEOPLE"). AND SEE STATE OF FLORIDA EX REL. ARTHUR FALKNER RELATOR V. BLANTON, CIRCUIT JUDGE OF DADE COUNTY PROBATE DIVISION, 297 SO. 2d 825 (1974).

EXTENSIVE CITATION OF AUTHORITY IS NOT ESPECIALLY REQUIRED NOR NECESSARILY RESORTED TO TO ESTABLISH THE POINT THAT PETITIONER WAS ENTITLED TO A CONSTITUTIONALLY ADEQUATE REVIEW ON APPEAL IN ADDITION TO THE FULL COMPLIMENT OF THE ACTION IN THE DISTRICT COURT. ASIDE FROM BIAS AND PREJUDICE, THERE ARE NO OVERRIDING NEEDS WHICH CAN ACCOUNT FOR THE LOWER TRIBUNAL'S RECKLESS ABUSE OF DISCRETION REGARDING THESE MATTERS. COMPARE

1/ CF. ERICK V. METROPOLITAN AND LIABILITY INS. CO., 595 F. SUPP. 529 (S.D. FLA. 1984).

GLAD ENTERTAINMENT GROUP, LTD V. ARAZY, 676 F. SUPP 616 (E.D. PA 1987) WITH LOCRANER V. STIERHEIM, 3 F.3d 356 (11TH CIR. 1993).

FIRSTLY, THE PETITIONER CONTENTS THAT THE US. MAGISTRATE LACKED SUBJECT MATTER JURISDICTION TO HEAR THE CASE IN THE FIRST PLACE, SINCE NEITHER DEFENDANTS NOR PLAINTIFF IN CASE NUMBER 4:98 CV 88-WS, CONSENTED TO A 28 USC § 636 PROCEEDING. BOTH § 636(B) AND § 636(C) PROVIDE FOR PROCEEDINGS TO BE HELD BEFORE A UNITED STATES MAGISTRATE WHEN THE PARTIES CONSENT (EMPHASIS ADDED). ACCORD CALDERON V. WAGO LIGHTHOUSE FOR THE BLIND, 630 F.2d 352 (5TH CIR. 1980). THUS THERE CAN BE NO VALID ORDER OF REFERENCE CONTAINED ON THE CASE RECORD SINCE NO SUCH CONSENT TO EXERCISE OF JURISDICTION BY A MAGISTRATE JUDGE HAD BEEN EXPRESSED. BUT SEE GLOVER V. ALABAMA BOARD OF CORRECTIONS, 660 F.2d 120, 124 (5TH CIR. UNIT 8 1982) ("GLOVER II").

SECONDLY, THE LOWER TRIBUNALS' COLLECTIVE UNREASONABLENESS REGARDING THE "THREE STRIKES STATUTE" IS READILY APPARENT. IF (AS THE RECORD CLEARLY ESTABLISHES) PETITIONER HAD HAD NO FUNDS WITH WHICH HE COULD EXPEND TO COMPLY WITH THE (PREPAYMENT) FILING REQUIREMENTS (\$150.00); WHEN HE INITIATED THE LAW-SUIT, THEN ANY ADDITIONAL COSTS (\$105 APPELLATE FILING FEE) WOULD ONLY PRESENT AN ILLUSORY CHOICE TO PAY, IN LIGHT OF PETITIONER'S POVERTY. (SEE WILLIAMS V. ILLINOIS, 399 US 235, 242 (1970). ALBET, IN THIS CASE, THE ROADBLOCK HAD BEEN GROUNDED UPON THREE PRIOR LITIGATION LOSSES WHICH THE DISTRICT COURT MADE NO EFFORT TO EVALUATE, AS TO THE FINAL DISPOSITION OF SUCH CASES AND PROCEEDINGS PRIOR TO ENTRY OF JUDGMENT, NOTWITHSTANDING TIMELY OBJECTIONS REFLECTING [SAME]. AS SUCH, PETITIONER COULD BY NO LEGAL MEANS HAVE BEEN PRECLUDED FROM HAVING THE COURT EXAMINE HIS 5 1983 CLAIMS. EVIDENTLY AN ARBITRARY APPLICATION OF THE "THREE STRIKES STATUTE." (SEE ALSO CHURCH V. ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA, 125 F.3d 210, 212 (11TH CIR. 1997); M.L.B. V. S.L.J., 117 S. CT. 555 (1996) (STATE REQUIREMENT THAT ALL APPELLANTS PAY FOR TRANSCRIPT OF TRIAL PROCEEDINGS UNCONSTITUTIONALLY PREVENTED INDIGENTS WHO COULD NOT AFFORD TRANSCRIPT FROM APPEALING PARENTAL TERMINATION ORDER).

ULTIMATELY, ON OR AROUND OCTOBER 23, 1998, PETITIONER FILED IN THE COURT OF APPEALS, A MOTION FOR THE APPOINTMENT OF COUNSEL, FOR THE PURPOSE OF SAFEGUARDING THE RIGHTS OF THE PARTIES. THE MOTION IN QUESTION WAS FILED BEFORE THE EXPIRATION DATE OF THE COURT OF APPEALS' PROPOSED ORDER OF DISMISSAL (APPENDIX A-2). PETITIONER SUBMITS THAT HE HAD BEEN DENIED THE OPPORTUNITY TO HAVE HIS MOTION HEARD, AND THAT HE WAS INDEED ENTITLED TO HAVE AN ARTICLE III COURT RULE UPON THE FORM, SUBSTANCE AND/OR MERITS OF THE SAID MOTION. THEREFORE, THIS COURT MUST GRANT CERTIORARI.

CONCLUSION

FOR ALL OF THE ABOVE- STATED REASONS, PETITIONER RESPECTFULLY
PRAYS THAT THE COURT GRANT A WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT.

RESPECTFULLY SUBMITTED,

DATED: DECEMBER 15, 1998

SIMON P. RIVERA

VINCENT F. RIVERA
FLORIDA STATE PRISON
P.O.B. 181 - # 518548
RAIFORD FLORIDA 32091
PRO SE

NAME: G. F. Holtom

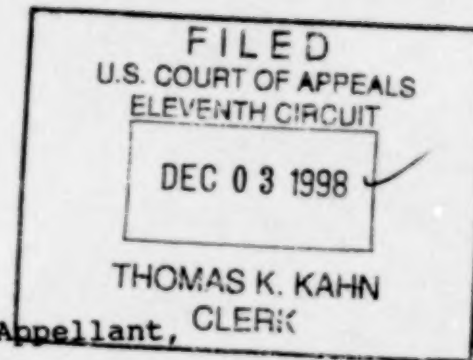
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
G. F. HOLTOM
Notary Public, State of Florida
My Comm. expires Feb. 26, 2001
Comm. No. CC 618204

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 98-2632



VINCENT FAUSTIND RIVERA,

v.

Plaintiff-Appellant, CLERK

FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Florida

ENTRY OF DISMISSAL

Pursuant to 11th Cir. R. 42-1(b), this appeal is hereby
dismissed for want of prosecution because appellant has failed to
file a motion for reconsideration within 35 days of entry of the
order finding this appeal frivolous, effective this 3rd day of
December 1998.

THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit

By: *Pam Holloway*
Deputy Clerk

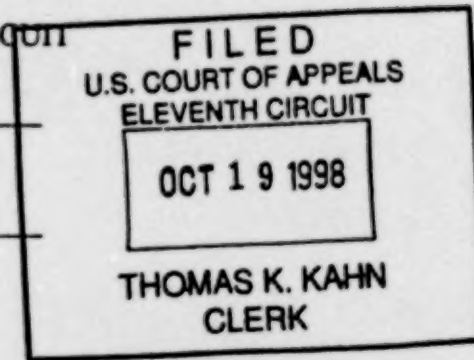
FOR THE COURT - BY DIRECTION

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 98-2632



Plaintiff-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Florida

ORDER:

The appellant, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis* (IFP). The district court denied IFP, certifying that the appeal was frivolous and not taken in good faith. However, the district court did not assess a \$105.00 appellate filing fee, as is now required under the Prison Litigation Reform Act of 1995 (April 26, 1996); see 28 U.S.C. § 1915 (as amended).

Appellant has consented to pay the \$105.00 filing fee and any additional costs assessed, using the partial payment plan described under 28 U.S.C. § 1915 (as amended). Thus, the only remaining

question is whether the appeal is frivolous. See § 1915(e)(2)(B)(i). This Court now finds that this appeal is frivolous and DENIES leave to proceed.

Within 35 days of the date of this order, appellant may file a motion for reconsideration. If the Court does not receive such a motion within 35 days, this appeal will be dismissed for lack of prosecution without further notice, pursuant to Eleventh Circuit Rule 42-1(b).

/s/ JOSEPH W. HATCHETT

CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

RIVERA
PLAINTIFF

v.

FL DOC
DEFENDANT

CIVIL ACTION NO: 4:98 CV 88-WS
JUNE 12, 1998

NOTICE REGARDING APPEAL IN PRISONER CIVIL RIGHTS ACTION

Your notice of appeal has been received by the clerk of this court. — ALSO REC'D MOTION
DOR I.F.P. - INCORRECT FORMS, PLEASE RESUBMIT
The filing fee for an appeal is \$105.00. ON THE ATTACHED APPEAL FORMS

If you can pay the fee, you must do so within twenty days of this date by making payment to the clerk of this court.

If you cannot pay the filing fee, you must complete the attached forms and file within twenty days of this date:

- (1) a motion to proceed in forma pauperis with supporting affidavit;
- (2) a fully executed prisoner appeal consent form which includes a financial certificate which has been completed by an authorized official at the correctional institution; and
- (3) a copy of computer printouts available through the institution reflecting all transactions in our prisoner account for the six month period preceding the filing of your notice of appeal.

If the full filing fee of \$105.00 is not timely paid or the above three items are not timely submitted to this district court, your appeal will be dismissed.

If you file a motion to proceed in forma pauperis, this district court will assess an initial partial filing fee to be paid if and when funds are available. The initial partial filing fee, if any, and all subsequent payments of the filing fee shall be made directly from your prisoner account by your custodian. Regardless of whether the district court finds your appeal is taken in good faith, and regardless of the success of your appeal or its early or eventual dismissal, the total of \$105.00 shall be collected from your account when funds are available.

If upon consideration of the above you now determine that it is no longer in your best interest to pursue the instant appeal, a notice of voluntary dismissal should be immediately filed in this district court.

APPENDIX

CONSENT FORM

Instructions to incarcerated appellant:

Complete this form, which is provided in quadruplicate.

- Submit the top three copies (white, yellow, and pink) to the Clerk of the United States Court of Appeals, 11th Circuit, using the envelope provided.
- You may keep the gold copy.

By completing this form, which incorporates provisions of the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915 (as amended), you are authorizing the Institution of your confinement ("the Institution") to pay the required \$105.00 appellate filing fee ("filing fee") from your prison account to the district court where your notice of appeal was filed.

CASE NAME: VINCENT FAUSTINO RIVERA v. FLORIDA DEPARTMENT OF CORRECTIONS
COURT OF APPEALS DKT. NO.: 98-2632
DISTRICT COURT DKT. NO.: 98-CV-88-WS NOTICE OF APPEAL DATE 5/7/98

1. So that I may prosecute my appeal, I, VINCENT FAUSTINO RIVERA (name), ID # 5785US, authorize officials at the Institution to withdraw a first payment from my account, that will be applied toward the filing fee. This first payment will be the greater of the following amounts:

- (1) 20% of the average monthly deposits to my account for the 6-month period immediately preceding the date I filed my notice of appeal in the district court; or
- (2) 20% of the average monthly balance in my account for that 6-month period.

Institution officials are authorized to pay to the clerk of the district court this first payment from funds in my account as soon as they become available.

2. I further authorize Institution officials to make additional monthly payments from my account until the balance of the \$105.00 is paid. These additional monthly payments will be equal to 20% of all of the preceding month's deposits to my account. Institution officials shall make monthly payments for me by deducting from my account all monies on deposit in excess of \$10.00 until the full filing fee is paid.

3. If, before I have paid the \$105.00 filing fee, the Court disposes of my appeal—by dismissing the appeal for lack of jurisdiction, for want of prosecution, or because it is frivolous, or by deciding the appeal on the merits—I authorize the Institution to continue making monthly payments to the district court until the full amount of the filing fee is paid. This means that, regardless of the Court's disposition of my appeal, I MUST STILL PAY THE ENTIRE \$105.00 FILING FEE.

4. Additionally, the Court may enter a JUDGMENT AGAINST ME FOR PAYMENT OF COSTS at the conclusion of the appeal, including any unpaid portion of the required \$105 filing fee. If the Court does so, I also authorize prison officials or custodial agents to pay from my prison account to the district court THE FULL AMOUNT OF THE COSTS ORDERED, using the installment payment plan explained above.

5. If I am transferred to another prison or custodial agency, I hereby consent that this authorization will continue to apply, and the new prison or custodial agency shall assume the duties of collecting and forwarding any remaining monthly payments to the district court.

6/25/98
Date

Vincent Faustino Rivera
Signature of Appellant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

VINCENT RIVERA,
PLAINTIFF

vs.

CIVIL ACTION NO: 4:98cv088-WS

STATE OF FLORIDA, et al.,
DEFENDANTS

ORDER

PART I.

(A) Plaintiff has been permitted to proceed *in forma pauperis* in this action (or has filed a Motion to Proceed Without Prepayment of Fees, or a Consent Form construed as such) and has filed a Notice of Appeal. Pursuant to 28 U.S.C. § 1915 and Fed.R.App.P. 24(a), this Court hereby certifies for the reasons stated below one of the following:

_____ This appeal is taken in good faith and the plaintiff is otherwise entitled to proceed on appeal *in forma pauperis*; payment of the required \$105.00 appellate filing fee shall be governed by PART II of this order; or

_____ This appeal is NOT taken in good faith; plaintiff is NOT entitled to proceed on appeal *in forma pauperis*; payment of the required \$105.00 appellate filing fee shall be governed by PART II of this order; or

X That plaintiff is not otherwise entitled to proceed on appeal *in forma pauperis*.

(B) The reasons for this Court's decision are:

Previously stated in this Court's Order dated _____
X Other: Plaintiff has had at least three prior actions and appeals dismissed on the grounds that they were frivolous. Therefore, pursuant to 28 U.S.C. § 1915(g), Plaintiff is not entitled to proceed *in forma pauperis*.

ENTERED ON DOCKET 7-1-98 BY amm
[Rules 88 & 79(a) FRAP OF 28 U.S.C. & 54 F.R.C.P.]
Copies mailed to: Rivera; ECCA

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
TALLAHASSEE, FLA.

98 JUN 30 PM 5: 03

FILED

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PART II.

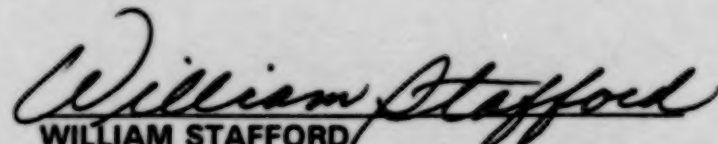
Pursuant to 28 U.S.C. § 1915 (as amended), and having reviewed the prisoner's account statement for the six-month period immediately preceding the filing of the Notice of Appeal, and consistent with the prisoner's signed CONSENT FORM (copy attached) authorizing payment of the required \$105.00 appellate filing fee from the prisoner's inmate account, this Court:

_____ directs the agency having custody of the prisoner ("the agency") to pay an initial partial filing fee in the amount of \$ _____. The agency shall forward that amount from funds in the prisoner's inmate account to the District Court Clerk by check made payable to "Clerk, U.S. District Court" which bears the inmate's name and this court's case number.

OR

_____ determines that an initial partial filing fee shall not be imposed. The agency having custody of the prisoner is directed every month to withdraw twenty percent of the preceding month's income credited to the prisoner's inmate account and remit the amount to the District Court Clerk each time the amount in the account exceeds \$10.00 until the total filing fee of \$105.00 has been paid. Checks should be made payable to "Clerk, U.S. District Court" and bear the inmate's name and this court's case number.

DONE AND ORDERED this 30th day of June, 1998.


WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

VINCENT F. RIVERA,

Plaintiff,

v.

4:98cv88-WS

STATE OF FLORIDA, et al.,

Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation docketed April 14, 1998. See Doc. 3. The magistrate judge recommends that the plaintiff's complaint be dismissed under 28 U.S.C. § 1915(g).

The plaintiff has been furnished a copy of the report and recommendation and has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Having considered the record, including the plaintiff's objections to the report and recommendation, the court has determined that the magistrate judge's report and recommendation should be adopted.

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Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation is hereby ADOPTED and incorporated by reference in this order of the court.

2. Plaintiff's motion to proceed in forma pauperis (doc. 2) is DENIED.

3. Plaintiff's complaint, and this action, are hereby DISMISSED without prejudice under 28 U.S.C. § 1915(g).

4. The clerk is directed to enter judgment accordingly.

DONE AND ORDERED this 27th day of April,
1998.

William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

4/27/98
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JUDGMENT IN A CIVIL CASE

<i>United States District Court</i>	<i>Northern District of Florida</i>
<i>Case Title:</i> VINCENT F. RIVERA, V. STATE OF FLORIDA, ET AL	<i>Docket Number</i> 4:98cv88-WS <i>Name of Judge or Magistrate Judge</i> WILLIAM STAFFORD

☐ **Jury Verdict.** This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court with the judge (magistrate judge) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

DISMISSED WITHOUT PREJUDICE UNDER 28 USC 1915(g)

ROBERT A. MOSSING, CLERK

April 27, 1998

By Deputy Clerk: SHARON WILLIS

Sharon Willis

ENTERED ON DOCKET April 27, 1998 BY *Sharon Willis*
(Rules 58 & 79(a) FRCP or 32(d)(1) & 55 FRCP)

Copies mailed to: *Rivera*
Cv. 0. Be.

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